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GOVERNMENT SERVICES

ABANDONED AND UNREGISTERED BURIAL SITES DISCUSSION PAPER

Your response to this Discussion Paper will help Alberta Government Services (AGS) and the Cross Ministry Committee on Human Remains (CMCHR) to develop policies, and perhaps a new Regulation, on the care of abandoned and unregistered cemeteries, and the disposition of human remains found in irregular burial sites.

The CMCHR is chaired by Aboriginal Affairs and Northern Development (AAND), with representation from nine Ministries that are affected in some way by the discovery of human remains in unregistered burial sites. The CMCHR is consulting with a variety of stakeholders to gather input on the issues described in this Discussion Paper. Alberta Community Development, which is a member of the CMCHR, and AAND are jointly conducting a separate but related consultation with Aboriginal communities.

This Discussion Paper provides an overview of the issues associated with the care of abandoned and unregistered cemeteries, and the discovery of human remains in unregistered burial sites. Each section of the survey gives a short description of a specific issue, followed by a series of options for addressing the issue. Please tell us your preferences by marking the appropriate box. Each question also has space for comments on the issue, and/or reasons for your answer. If you need more room to answer a question, or have additional comments, please use a separate piece of paper, and attach it to the end of the discussion paper.

Please provide your comments by **April 25, 2003** to ensure that your views are taken into account. Your completed questionnaire can be submitted in one of the following ways:

By mail to: Unregistered Burial Sites Discussion Paper
Alberta Government Services
Consumer Programs
3rd Floor, Commerce Place
10155 – 102 Street
Edmonton, Alberta T5J 4L4

By fax to: (780) 427-3033

You can also complete this questionnaire online, using the Alberta Government Services' Web site at www.gov.ab.ca/gs. Follow the "Discussion Papers" link under the heading "The Department."

If you have questions about the Discussion Paper, or if you would like additional copies, please phone: (780) 427-5210, and ask to speak with Beth Jenkins or Helen Hanson.

DEFINITIONS

cemetery - land that is set apart or used as a place for the burial of dead human bodies or other human remains, or in which dead human bodies or other human remains are buried

Final Certificate of Approval (FCA) – a certificate issued by the Director, before land set aside as a cemetery can be used for burials

registered cemetery – a cemetery for which a Final Certificate of Approval has been issued

abandoned cemetery - a recognized cemetery that no longer has an identified owner to maintain it; Final Certificate of Approval may or may not have been issued

unregistered burial site – a site where human remains are buried, often with no obvious markers in the area and no notice of burials on the land title; often established before *Cemeteries Act*, or other cemeteries legislation, came into effect, therefore a Final Certificate of Approval has not been issued

INTRODUCTION AND BACKGROUND

Burial sites in Alberta may be broadly categorized as:

- registered cemeteries
- abandoned/neglected cemeteries
- unregistered burial sites

Individuals and community groups have contacted Government Services to express concern about a number of abandoned and neglected cemeteries. Their concerns include perceived lack of respect for ancestral or pioneer remains. In other instances, erosion, urban expansion and resource development activities have exposed human remains at a number of unregistered, unmarked burial sites across Alberta. Examples include the St. Joseph's Industrial School (and associated "Dunbow" Cemetery) in southern Alberta, and the burials site associated with the original site of Fort Edmonton, located on the Rossdale Flats in the Saskatchewan River valley.

Characteristics associated with these and other unregistered burial sites include:

- Initial use pre-dates provincial cemeteries legislation.
- Some sites have historical, archeological or cultural significance.
- Remains may have been uncovered by natural erosion or development activities.
- Often, there is no identifiable individual or group to take control of the remains.
- The discoveries generate demands for government action from interested community groups.

The discovery, or public notice, of human remains in an abandoned or unregistered burial site raises the following issues:

1. What is to be done to manage the use of the site while showing respect for the deceased and their descendants or cultural affiliates?
2. Who has financial and decision-making responsibility for the site?
3. How are various interests to be balanced and weighed?
4. How can decisions be made in a systematic and coherent manner?

In the sections that follow, please indicate your preferences in the spaces provided.

Issue 1: Abandoned Cemeteries

The *Cemeteries Act (CA)*, and the *CA General Regulation*, require the owner of a registered cemetery to maintain the grounds of the cemetery, including all interment space, structures and markers, so as to ensure the safety of the public and preserve the dignity of the cemetery, and to ensure that the cemetery and any required fences, walks and entrances to the cemetery are kept in a good state of repair. However, the movement of people from rural to urban areas has left a number of small community cemeteries without owners. There are also a number of cemeteries, once owned by small cemetery companies. These companies, and the cemeteries, were established before the current legislation came into effect. Many of these companies have ceased operation.

Without an identifiable owner to conduct regular maintenance, abandoned cemeteries may become overgrown and markers may disappear. Relatives of the deceased are often concerned that their ancestors' graves are not being properly looked after.

Some municipalities, with the aid of local service groups, have taken on responsibility for a number of these cemeteries. However, as expenditures increase in other areas, and as volunteer groups experience increasing calls on their time and energy, there is an increasing reluctance among individuals and groups to take on additional responsibilities for such tasks as mowing grass and repairing or straightening grave markers in abandoned cemeteries.

1.1 How should abandoned cemeteries be managed?

a) They should be allowed to return to a natural state. ☐
b) They should be maintained, but with a less rigorous standard of care than the standard for registered cemeteries. ☐
c) They should be maintained with the same standard of care as registered cemeteries. ☐
d) Other (Please specify) _____ ☐

Comment(s) about the issue / reason(s) for your answer

_____

1.2 If you selected (b) or (c) for Question 1.1, who should do the work to take care of abandoned cemeteries? (Questions about paying for the care are in **Section 3.**)

a) Descendents of the deceased? ☐
b) Municipalities? ☐
c) Community (volunteer) groups? ☐
d) Other? (Please specify) _____ ☐

Comment(s) about the issue / reason(s) for your answer

_____

Issue 2: Unregistered Burial Sites

Burials outside a registered cemetery may represent the full range of human presence in North America, dating from 12,000 years ago to current times. Some are isolated burials, and some are extensive. Some burials indicate ceremonial intent. Other human remains may have become buried as the consequence of an accident or misadventure – ancient or more recent. Tools and other artifacts associated with the skeletal remains may provide information about the circumstances of the burial, as well as information about lifestyles and cultural activity. This information is particularly valuable if the site predates contact between European and Aboriginal cultures.

More recent single or small family burials are of less archaeological interest, but are still of interest to descendants and cultural affiliates of the deceased. This type of burial may be associated with pioneer family plots, or with trap lines and land used for hunting. This type of burial may require decisions about moving the remains, or allowing access to the burial site, if the remains have been uncovered during development activity. There is no formal process for making these kinds of decisions. Currently each decision is made on a case-by-case basis.

The existing Alberta protocol on discovery of human skeletal remains outlines roles and responsibilities for the Office of the Chief Medical Examiner, through the *Fatality Inquiries Act,* and for the Archaeological Survey (Alberta Community Development) through the *Historical Resources Act.* Police agencies may be involved to determine if the human remains are associated with the scene of a crime. The existing protocol provides for examination by a qualified archaeologist of remains that appear to predate A.D. 1900. However, the protocol does not indicate what is to be done with the remains when the examination is finished, or when no examination is required.

2.1 We propose that the existing Alberta protocol be expanded to include a role for the Director for the *Cemeteries Act* and its regulations.

Do you

Agree? ☐ Disagree? ☐ Don't know / no opinion ☐

Comment(s) about the issue / reason(s) for your answer

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Some provinces and states have established policies to deal with discoveries of human remains on unmarked / unregistered sites. These policies include:

- establishing a clear responsibility for care of the human remains
- developing a process to notify representatives of the deceased
- setting out procedures for the process of discovery, disinterment, investigation and search for other graves
- determining when and if a permit is required to move the human remains

We propose that an expanded Alberta protocol address these issues in the following ways:

2.2 Unless the remains are endangered by erosion, or by development activity that cannot be adjusted to avoid the burial site, human remains discovered in an unregistered burial site should stay in the location where they were discovered.

Do you

Agree? ☐ Disagree? ☐ Don't know / no opinion ☐

Comment(s) about the issue / reason(s) for your answer

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In many unregistered burial sites, time has eroded information that could help identify direct descendants or close relatives of the deceased. It is important that community, rather than individual, interests be represented in the disposition of the remains, should they need to be disinterred for reasons described in question 2.1.

2.3 (a) When grave goods or cultural artifacts make it possible to identify the cultural group to which the deceased may have belonged, we propose that representatives of that cultural group should be consulted regarding the disposition of the remains.

Do you

Agree? ☐ Disagree? ☐ Don't know / no opinion ☐

Comment(s) about the issue / reason(s) for your answer

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2.3(b) The Province of Saskatchewan has developed an agreement with the council of Elders, if the remains in an isolated burial site are found to be of Aboriginal origin. Manitoba, BC and the Yukon consult with the language group in closest geographic proximity, or having the closest traditional ties, to the site of the burial. In North Carolina, notification is done through the newspapers in the county where the remains were discovered.

Please describe how the representatives of the cultural group should be selected and/or notified in Alberta.

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_____

Developers and landowners can be better prepared to adjust plans for land use if they are aware, in advance of initiating a development activity, that unregistered burial sites exist on the site. Government Services "flags" the properties where there are known burial sites. This is accomplished by way of attaching a habendum clause to the land title. (A habendum clause is a notice that the land in question contains a cemetery or burial). This procedure ensures that the potential landowner is aware of any burial sites that exist on the property when the land is being transferred or purchased. However, there is currently no coordinated system for reporting discoveries of burials, and no easy way to "flag" burial sites located on public land.

2.4 We propose that a coordinated process be developed so that burials can be reported upon discovery, and notations can be placed on the land title, or the public lands document, to alert potential land users that burials exist on the land in question.

Do you

Agree? ☐ Disagree? ☐ Don't know / no opinion ☐

Comment(s) about the issue / reason(s) for your answer

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The discovery of human remains can result in limitations to a development project, or expansion of a facility. The landowner, and the developer of any project associated with the burial site, have an interest in decisions regarding removal or reinterment of remains. Descendents and cultural affiliates naturally have an interest in the decisions. Historians, archeologists and genealogists may have an interest in preserving historic information associated with the burial site. The courts are the current forum for resolving any conflict among the various interests. This results in delay and added expenses for all parties.

We are examining the feasibility of establishing an alternate process for resolving conflicts regarding disposition of discovered human remains. Details have not yet been determined. However, to gauge the support in principle for this kind of process, we are asking the following question.

2.5 We propose that a tribunal be appointed to mediate or arbitrate conflicts regarding disposition of discovered human remains.

Do you

Agree? ☐ Disagree? ☐ Don't know / no opinion ☐

Comment(s) about the issue / reason(s) for your answer

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Issue 3: Paying for Care, Examination or Moving of Burial Sites

Section 33 of the *Cemeteries Act (CA)* requires the owner of a commercial cemetery to set aside for perpetual care a portion of sales, leases and contracts. However, a number of cemeteries were established, and then abandoned, before the *CA* came into effect. The *Cemeteries General Regulation* allows the owner of a discontinued cemetery to enter into an agreement with the municipality served by the cemetery to provide maintenance for the cemetery. However, older cemeteries were often abandoned before this *Regulation* came into effect.

3.1 Who should pay for the care of abandoned cemeteries?

a) The current owner of the land where the cemetery is located? ☐
b) Descendents of the deceased? ☐
c) Municipalities? ☐
d) Community (volunteer) groups? ☐
e) Other? (Please specify) _____ ☐

Comment(s) about the issue / reason(s) for your answer

_____

Section 35(1) of the *CA* exempts municipalities and religious organizations from the requirement to set aside, for perpetual care, a portion of the money paid for the sale, lease or rent of space in a cemetery, columbarium or mausoleum. Municipalities usually manage the care of cemeteries within their public works or parks budgets. Religious organizations manage the care of cemeteries out of their denominational funds. However, a number of organizations, for a variety of reasons, are now facing economic difficulties.

3.2 We are proposing that municipalities and religious organizations be required to establish perpetual care funds for any **new** cemeteries that they may establish, in order to avert problems for future generations.

Do you

Agree? ☐ Disagree? ☐ Don't know / no opinion ☐

Comment(s) about the issue / reason(s) for your answer

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There are a number of costs associated with examination of an unregistered burial site, to determine the extent of the burials, and to determine historical significance of the site and cultural affiliation of the deceased. If the situation requires disinterment and reburial of the remains, there are costs associated with obtaining a permit, exhuming the remains, purchasing land or grave sites suitable for reburial, transporting of the remains, and an honorarium or gift for the elder or clergy conducting the burial service. There may also be costs for acquiring and placing appropriate grave markers, or memorial cairns.

To help offset the cost of caring for abandoned cemeteries, and the costs of examination of an unregistered burial site, we are exploring the feasibility of establishing a fund that could be

accessed by eligible groups or individuals to cover approved costs. Organizational details about fund management, funding formula and access criteria have not yet been determined. However, to gauge the support in principle for this kind of fund, we are asking the following questions.

3.3 How might care for abandoned cemeteries be financed?

a) Through a fee collected as part of the burial permit process, and paid into a central fund? ☐
b) From municipal government public works or parks budgets? ☐
c) Other? (Please specify) _____ ☐

3.4 How might costs for examination of unregistered burial sites be financed?

a) Through a fee collected as part of the burial permit process, and paid into a central fund? ☐
b) The developer or landowner should absorb the costs in the same way that costs for other complications (e.g. discovery of underground water) are paid for. ☐
c) Other? (Please specify) _____ ☐

3.5 If you selected a) for question 3.3 or 3.4, what fee would be reasonable? (Check only one box.)

$ 1 - $5 ☐
$ 5 - $10 ☐
$ 10 - $15 ☐
$ 15 - $20 ☐
5% of funeral services purchased ☐
Other (please specify) ☐

_____

3.6 For part a) in question 3.3 or 3.4, please indicate who should manage / administer the fee collection process, and / or the fund.

_____

3.7 If you selected c) in question 3.3 or 3.4, please use this space to explain your suggestion in more detail.

_____
_____
_____

Additional Comments

If you have additional comments on any of the issues included in this discussion paper, or any other issues related to the discovery of human remains, or the care of abandoned cemeteries, please use the space below or attach another piece of paper to the back of the discussion paper. Please indicate the question number related to your comment.

Please check one of the following, to indicate where you learned about this consultation.

- ☐ received a copy in the mail
- ☐ Government Web site
- ☐ radio
- ☐ Newspaper (please indicate which one) _____
- ☐ Other method (please specify) _____

STAKEHOLDER INFORMATION

Please check one of the following, to indicate which area of interest your responses represent:

- ☐ Municipal government
- ☐ Provincial government department
- ☐ Cemetery owner / operator
- ☐ Funeral service business
- ☐ Resource development business
- ☐ Church / religious organization
- ☐ Private landowner
- ☐ Individual consumer
- ☐ Community / historical organization (please specify type) _____

_____

The following information is optional:

Name and mailing address of person completing this form (please print)

_____

_____

_____

_____

Name of organization you represent

_____

Telephone number (____)_____

Fax number (____)_____

E-mail address _____

Thank you for taking the time to respond to our discussion paper. Please return your responses by **April 25, 2003** to ensure that your views are taken into consideration. *(See page 1 for return address and contact information.)*

This information is being collected for the purpose of developing solutions to an issue of concern to Alberta consumers and businesses. The *Freedom of Information and Protection of Privacy Act* governs Alberta Government Services' collection of this information. Please call Beth Jenkins of Government Services at (780) 427-5210 during regular office hours if you have any questions about the collection and use of this information.